

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**UNITED STATES ex rel.  
CURTIS LOCKEY, et al.,  
Plaintiffs,**

**v.**

**CITY OF DALLAS, et al.,  
Defendants.**

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**CIVIL ACTION NO. 3-11-CV-354-O  
ECF**

**CITY OF DALLAS' MOTION TO DISMISS FOR LACK OF JURISDICTION**

TO THE HONORABLE COURT:

Defendant, City of Dallas (the "City"), files this motion and respectfully show the court the following:

**I.  
The Claims Are Barred by Public Disclosure**

Relators have brought a False Claim Act lawsuit. When the United States elects not to intervene in a False Claims Act lawsuit, as here, the district court lacks jurisdiction over the claim if the alleged actions by the defendant have been publicly disclosed. *See* 31 U.S.C. § 3730(e)(4)(A). This jurisdictional bar exists to eliminate parasitic lawsuits by those who learn of the claimed actions through public channels and seek remuneration although they contributed nothing to the exposure or discovery of the alleged actions.

The Relators' lawsuit is a quintessential parasitic lawsuit. The Relators are not the original source of any of the information contained in the amended complaint. They discovered nothing on their own and all the claims on which they base their allegations have been publicly disclosed, discussed, and debated. Indeed their claims are nothing more than an attack on the sufficiency of a document developed in public meetings, submitted to HUD more than four years

ago, and published on the City's website since that time. Relators attack the sufficiency by comparing the document to 1996 HUD Guide and challenging actions that the City performed pursuant to public meetings and debate and that had been generally reviewed by HUD. The Court lacks jurisdiction and the action against the City must be dismissal.

## **II.**

### **The case should be dismissed pursuant to Rule 12(b)(1)**

FED.R.CIV.P. 12(b)(1) authorizes the dismissal of a case for lack of jurisdiction over the subject matter and a motion to dismiss for lack of subject matter jurisdiction is to be considered by the court before any other challenge. *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir.1994). The public disclosure bar may be addressed in a rule 12(b)(1) motion. *See United States ex rel. Barrett v. Johnson Controls, Inc.*, No. 3:01-CV-1641-M, 2003 WL 21500400, \*3-4 (N.D. Tex. April 9, 2003). The case should be dismissed pursuant to Rule 12(b)(1).

## **III.**

### **Brief and Appendix in Support of the Motion**

The City has separately filed a brief and appendix in support of the motion and they are incorporated by reference.

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the City requests that the Court grant in whole, or alternatively in part, its motion to dismiss for lack of jurisdiction.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DALLAS, TEXAS

By s/ Charles Estee

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### **CERTIFICATE OF SERVICE**

I certify that on March 16, 2012, I electronically filed the foregoing document with the clerk of court for the United States District Court for the Northern District of Texas using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all counsel of record who have consented in writing to accept this Notice as service of this document by electronic means.

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